Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 15, 2011

TO: Representative Mark Radcliffe
Room 321 West, State Capitol

FROM: Chris Carmichael, Fiscal Analyst

SUBJECT: Assembly Bill 76, Costs of Prescription Drugs and Devices for Incarcerated Persons: Fiscal Effect

At your request, I am providing information on the fiscal effect of Assembly Bill 76, which requires the Department of Corrections, sheriffs, superintendents, or other keepers of an inmate to charge a prisoner for the costs of providing any medical care or treatment that is a prescription drug or device while the prisoner is in a state prison, a jail or house of correction. The bill specifies that the fee changed be that charged under s. 302.386 (4) related to medical and dental visit co-pays.

Current Law

Under current law, the Department of Corrections provides and pays for medical and dental services for prisoners. However, the state does not pay for medical and dental services if the prisoner has the financial ability to pay, or if the service is payable under any of the following: (a) a disability insurance policy; (b) worker's compensation; (c) benefits from the state or federal Departments of Veterans Affairs; (d) federal Hill-Burton benefits; (e) Medicare benefits; or (f) third-party liability other than in (a) through (e).

For services not payable under one of the above, the Department can charge and collect a deductible, coinsurance, copayment, or similar charge upon the medical or dental service that an inmate receives. If the inmate requests the medical or dental services, the Department must charge and collect a deductible, coinsurance, copayment, or similar charge, which may not be less than $2.50 for each request. A service provider cannot deny care or services if the prisoner is unable to pay, but an inability to pay does not relieve the prisoner of liability of the charges unless the Department excepts or waives the liability under criteria set by administrative rule.

Current law requires the Department to promulgate rules to establish all of the following: (a)

the specific medical or dental services on which a deductible, coinsurance, copayment or similar charge is imposed; and (b) the amounts of deductibles, coinsurances, copayments or similar charges for the medical or dental services. Under the current administrative code, during the assessment and evaluation process, an inmate must sign a notice form acknowledging that the inmate will be charged a copayment for non-emergency medical, dental or nursing services received at the inmate's request. Health staff must charge a $7.50 copayment for each face-to-face contact for medical, dental or nursing services. At the face-to-face contact, the inmate must sign a disbursement form acknowledging the receipt of health services.

Assembly Bill 76

Assembly Bill 76 would specify that if any medical or dental services that an inmate receives is a prescription drug or device, the Department must require the inmate to pay a deductible, coinsurance, copayment, or similar charge. This requirement may be excepted or waived by the Department under criteria set by administrative rule. The bill would first apply to medical treatment received on the effective date of the bill.

In 2009-10, the Department expended $15,599,200 for pharmaceuticals in the adult correctional institutions. The table below indicates the top 20 pharmaceutical products in 2009-10 by cost, and provides an indication of its use. During this period, these 20 products accounted for 40.2% of correctional pharmaceutical costs.

Generic Name	Strength	Dollars	Indication
Insulin Glargine	100 u/ml	$631,877.73	Diabetes
Peginterferon Alfa 2B	150 MCG/0.5 ml	$615,928.95	Hepatitis C
Emtricitab/Tenofovir Df/Efavir	200-300-600 mg	$600,787.78	HIV
Emtricitabine/Tenofovir DP Fum	200-300 mg	$504,909.17	HIV
Fluticasone Prop/salmeterol	250-50 mcg	$410,870.82	Asthma/COPD
Ziprasidone HCL	80 mg	$359,559.66	Antipsychotic
Adalimumab	40 mg/0.8 ml	$358,862.32	Rheumatoid Arthritis
Fluticasone Prop/Salmeterol	500-50 mcg	$322,026.94	Asthma/COPD
Albuterol Sulfate	Not available	$280,097.28	Asthma/COPD
Quetiapine Fumarate	400 mg	$243,286.68	Antipsychotic
Peginterferon Alfa 2B	120 MCG/0.5 ml	$230,529.01	Hepatitis C
Ziprasidone HCL	60 mg	$228,325.80	Antipsychotic
Aripiprazole	20 mg	$220,158.96	Antipsychotic
Fluticasone Prop/Salmeterol	100-50 mcg	$197,390.99	Asthma/COPD
Atazanavir Sulfate	300 mg	$194,254.08	HIV
Epoetin Alfa	10000 u/ml	$183,370.23	Anemia secondary to HIV, cancer, renal failure
Aripiprazole	30 mg	$179,106.96	Antipsychotic
Clopidogrel Bisulfate	75 mg	$174,151.84	Antiplatelet agent
Venlafaxine HCL	225 mg	$173,083.81	Antidepressant/ Antianxiety
Venlafaxine HCL	150 mg	$168,665.07	Antidepressant/ Antianxiety

Corrections' Central Pharmacy software tracks information by what are termed "transactions." According to the Department a "transaction" is not the same as a prescription. "Some medicines require multiple cards to be filled to equal one month's supply. Example: a new order for Ibuprofen 800 mg #90 would take 3 cards of 30 [tablets] to complete; one "new" transaction and two "refills" to complete the initial 3-card order. Some medicines may require as many as six or seven cards to complete a one-month order (i.e., six or seven refills)." Therefore, while the Department indicates that there were 762,727 transactions in 2009-10, it is not able to specify how many prescriptions this number of transactions represents.

Under the bill, Corrections would be required to charge inmates $7.50 per prescription, including refills. Since it is unknown how many prescriptions the Department's 762,727 transactions represent, it is unknown how much revenue would be generated under the bill. If, however, it is assumed that each prescription represents three to five transactions, the maximum additional revenue generated would be between $1.1 million and $1.9 million per year.

In reviewing the fiscal effect of the bill, the following should be noted:

- Requiring an inmate copayment on prescriptions could provide another revenue source

to support the costs of pharmaceuticals. Further, to the extent that inmates delay seeking medications in order to avoid such copayments, costs could decline. However, avoidance of medications could increase other departmental costs to the extent that more emergency treatment is required or worsening health conditions occur.

- The bill specifies that the amount charged for prescription drugs be equivalent to the amount the Department charges for medical or dental services, which is set by administrative rule. The current charge for medical or dental services is $7.50, although the Department may except or waive liability under criteria that Corrections establishes by rule. To the extent that the Department decreased the amount charged under the rule, or established additional exceptions or waivers of liability, potential additional revenue to support pharmaceutical costs would decrease. These modifications could, however, also mitigate other potential increases for emergency services or other health treatment costs as a result of inmates not taking medications.

- The Department of Corrections noted in its fiscal estimate to AB 76 that there has been an increase in delinquent inmate loans, which would delay any increase in revenue from the new copayment. Further, the Department indicated that additional administrative costs could be incurred as a result of charging tracking prescription copayments.

- Inmates leaving prison are expected to pay any accumulated debt. To the extent that inmates are charged for pharmaceuticals and unable to pay: (a) immediate revenue to the Department is lessened; and (b) the inmate has a debt that at a future point in time will need to be repaid.

- The fiscal effect identified represents a maximum amount based on estimates of the number of transactions per prescription. To the extent that prescriptions are composed of fewer than three transactions, potential revenue would exceed the amounts identified; likewise, if prescriptions are composed of more than five transactions, revenues would be lower.

- Provisions of the bill would be applicable to local units of government. However, information on local jail pharmaceutical costs, revenues, and medical/pharmaceutical practices is unknown. Therefore, these revenues cannot be determined.

I hope this information is of assistance.

CC/le

DEPARTMENT OF CORRECTIONS
Office of the Secretary
DOC-1160 (Rev. 6/2007)

RECORD REQUEST RESPONSE

WISCONSIN
Wisconsin Statutes
Sections 19.35 & 19.36

INSTRUCTIONS: Please print (use a pen) or type this response. Prepare an original and one copy for file.

YOUR APPEAL RIGHTS

If your request was made in writing and all or a portion of the request was denied, you may appeal the denial by writing to the **Department Record Custodian, Kathryn R. Anderson at Department of Corrections, P.O. Box 7925, Madison, WI 53707-7925.** Please include a copy of your original request as well as a copy of this form. If the Department Record Custodian upholds this decision, you can further appeal by petitioning the Circuit Court for a writ of mandamus ordering release of the record(s), or you may apply to the Attorney General or the District Attorney of the county where the records are held.

REQUESTER NAME	Representative Mark Radcliffe
ADDRESS	(Request received and response requested via email.)
CITY, STATE, ZIP CODE	State Capitol 321 W Madison, WI 53708

TELEPHONE NUMBER	FAX NUMBER	E-MAIL ADDRESS	NAME OF COUNTY WHERE RECORDS ARE HELD
608.266.7461		Rep.Radcliffe@legis.wisconsin.gov	Dane; Dodge

REQUEST INFORMATION

DATE OF REQUEST	DATE REQUEST RECEIVED
05.03.11	05.03.11

REQUEST FORMAT - Your Request Was: (Check One)

☐ ORAL ☒ IN WRITING

RECORDS REQUESTED - You Asked For: (Check One)

☒ Record(s) as described in the attached copy of your request. (ATTACH COPY)

☐ The following record(s): _____

RESPONSE (Check all that apply)

☐ **GRANT OF REQUEST** See "ADDITIONAL COMMENTS" section for details about the manner in which you will receive record access.

- ☐ Your ENTIRE request is granted. See "Additional Comments" section for details about the manner in which you will receive record access.
- ☒ The following PART of your request is granted:
  - All documents that show the total cost to the state of Wisconsin for prescription medications and non-prescription medications given to inmates in all Wisconsin correctional facilities in 2009 and 2010: **ATTACHED**
  - All e-mails to and from Melissa Roberts regarding prescription and non-prescription medications for inmates in Wisconsin state correctional facilities, that mention AB 76, Rep. Radcliffe or Mark Radcliffe: **ATTACHED**
  - 2011 salary of DOC employee Melissa Roberts: **$43.30/hour**

☐ **INSUFFICIENTLY LIMITED REQUEST** Your request is not reasonably limited as to subject matter or length of time represented by the record(s). Therefore, the request does not qualify under Wisconsin's Open Records Law. However, if you revise your request, it will be re-evaluated.

- ☐ Your ENTIRE request is insufficiently limited.
- ☐ The following PART is insufficiently limited:

☐ **STATUTORY "RECORD" DEFINITION** Wisconsin's Open Records Law applies only to materials within the statutory definition of a record". Requests for materials exempt from the "record" definition do not qualify under the Open Records Law.

- ☐ Your ENTIRE request asked for material which is exempt from the "record" definition because:
- ☐ The following PART of your request asked for material which is exempt from the "record" definition because:

☒ **NO DOCUMENTS**

- ☐ NO DOCUMENTS or other materials were found meeting your description.

Continued

☒ For the following PART of your request we found no documents or other materials:
- All documents that show the total number of medical prescriptions dispensed, or prescribed, to inmates in all State of Wisconsin-operated correctional facilities in 2009 and 2010.
- All documents that show the total number of non-prescription medications given to inmates in all state of Wisconsin correctional facilities in 2009 and 2010.

See "Additional Comments" for further response.

☐ DENIAL OF REQUEST
- ☐ Your ENTIRE request is denied.
- ☐ The following PART of your request is denied:

☐ REASON FOR DENIAL
- ☐ CONFIDENTIALITY LAW. Your access to the record(s) is prohibited by the following statutes, rules, or regulations:

- ☐ COMMON LAW BALANCING TEST (where no confidentiality law applies). Your access to the record(s) would be so harmful to the public interest as to outweigh any presumed right to access to the record(s). Disclosure would be of overriding harm for the following reason(s):
  - ☐ An INVESTIGATION in progress would be impeded by the record access.
  - ☐ INFORMANTS described in the record(s) would be jeopardized by the record access by being subject to retaliation, discouraging future informants.
  - ☐ The RECORD SUBJECT may be jeopardized by being subject to harassment or other intimidation of a nature contrary to the public interest.
  - ☐ A BREACH OF SECURITY would result from the record access.
  - ☐ OTHER:

ADDITIONAL COMMENTS:

As indicated previously, there are no documents that meet your request for "total number of medical prescriptions"; however, we have attached *transaction* information which was explained to you via email on 04.26.11 and 05.03.11(emails attached as part of your request). See Pages 20 and 21 of this report for pharmaceutical expenditure data from FY95-FY00: http://legis.wisconsin.gov/lab/reports/01-9full.pdf The information found on Page 21, Table 5, column 4 reads "Prescriptions and Refills"; that data reflects the number of *transactions* for the corresponding FY.
We have also included information on revenue from inmate co-pay for FY05-FY10 as it seems germane to the request.

PRINT OR TYPE RECORD CUSTODIAN'S NAME	OFFICE / FACILITY REPRESENTED
Information in response provided by Eric Knox (DAI Central Pharmacy); Dustin Trickle (DMS Budget); and Melissa Roberts (Office of the Secretary)	N/A
RECORD CUSTODIAN'S SIGNATURE Melissa Roberts on behalf of DOC	DATE SIGNED 05.18.11

Roberts, Melissa B - DOC

From: Rep.Radcliffe [Rep.Radcliffe@legis.wisconsin.gov]
Sent: Tuesday, May 03, 2011 2:33 PM
To: Roberts, Melissa B - DOC
Subject: Open Records Request

Dear Ms. Roberts,

Pursuant to Wisconsin's Open Record's Law, I am requesting the following:

- All documents that show the total number of medical prescriptions dispensed, or prescribed, to inmates in all State of Wisconsin-operated correctional facilities in 2009 and 2010

- All documents that show the total number of non-prescription medications given to inmates in all state of Wisconsin correctional facilities in 2009 and 2010

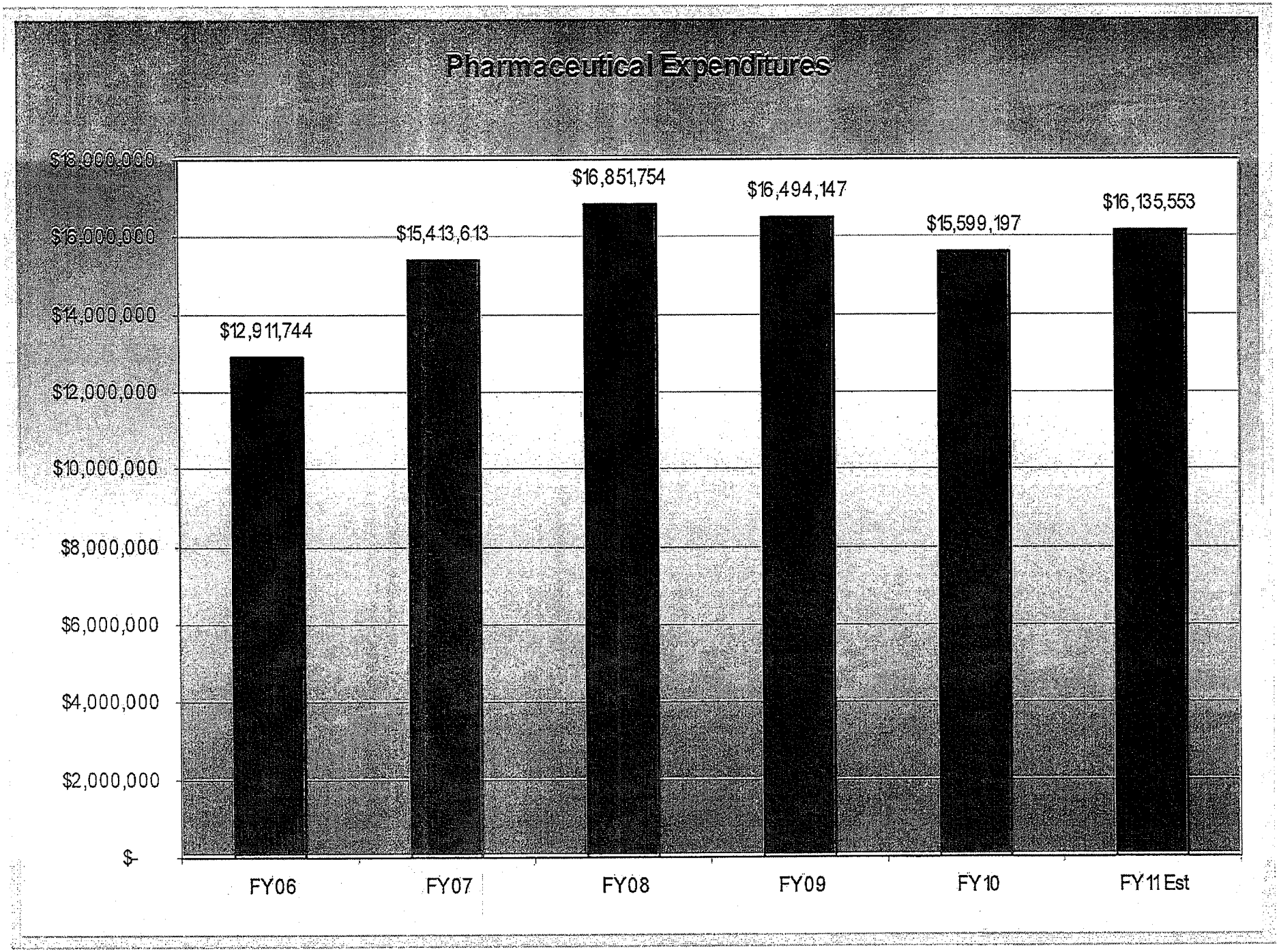
- All documents that show the total cost to the state of Wisconsin for prescription medications and non-prescription medications given to inmates in all Wisconsin correctional facilities in 2009 and 2010

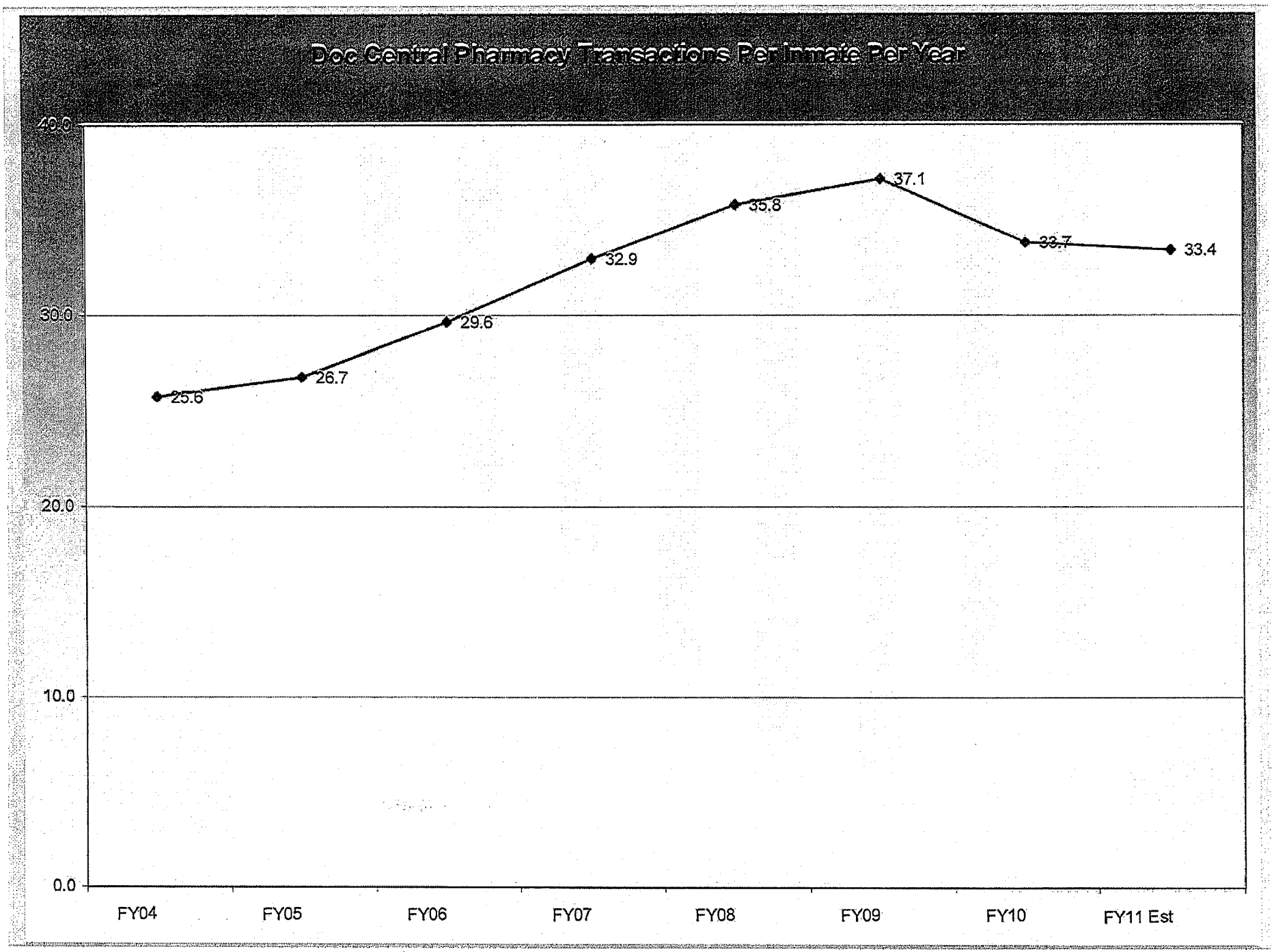
- All e-mails to and from Melissa Roberts regarding prescription and non-prescription medications for inmates in Wisconsin state correctional facilities, that mention AB 76, Rep. Radcliffe or Mark Radcliffe

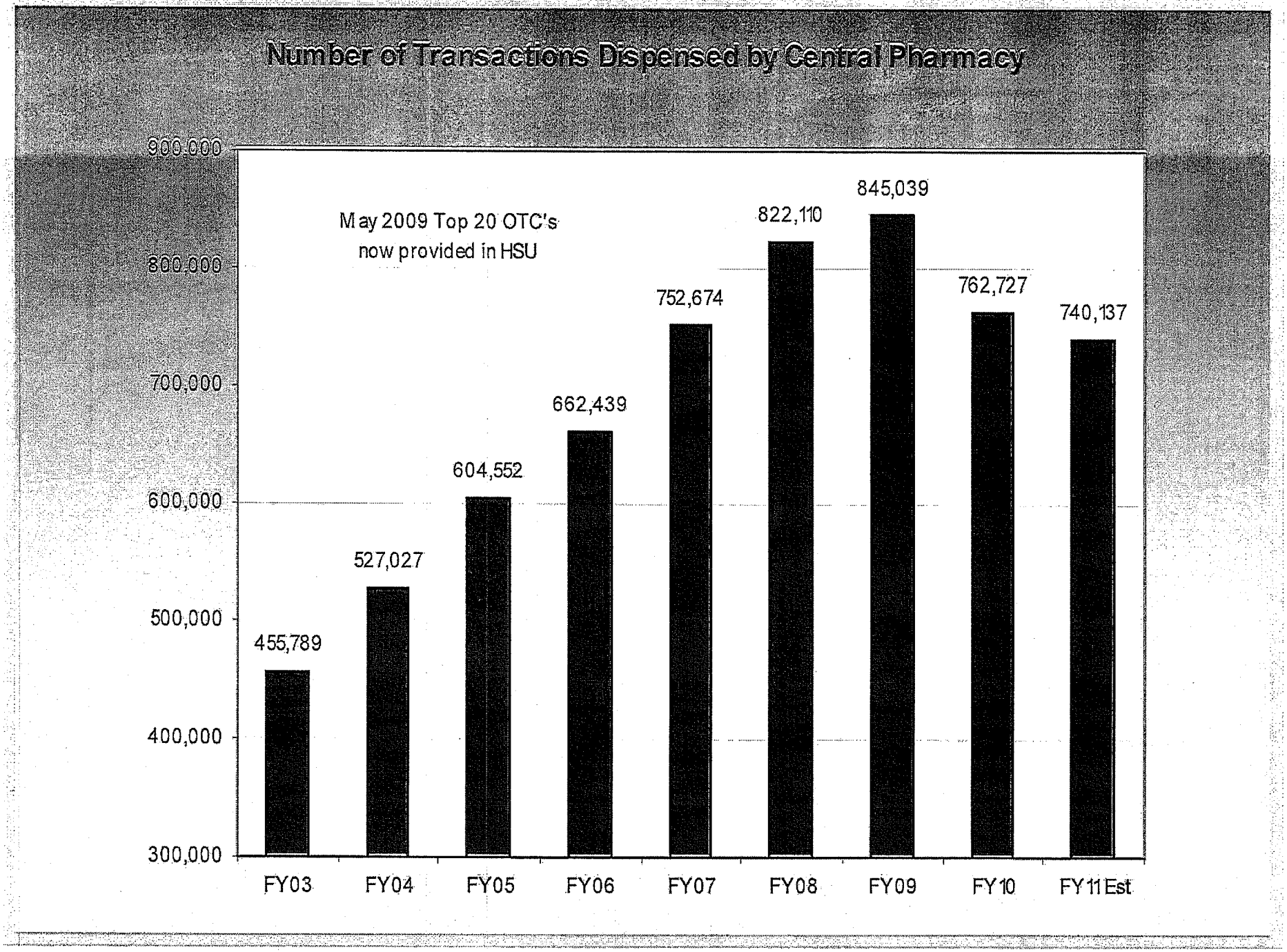
- 2011 salary of DOC employee Melissa Roberts

I request that these records be presented in electronic form as a cost-saving measure.

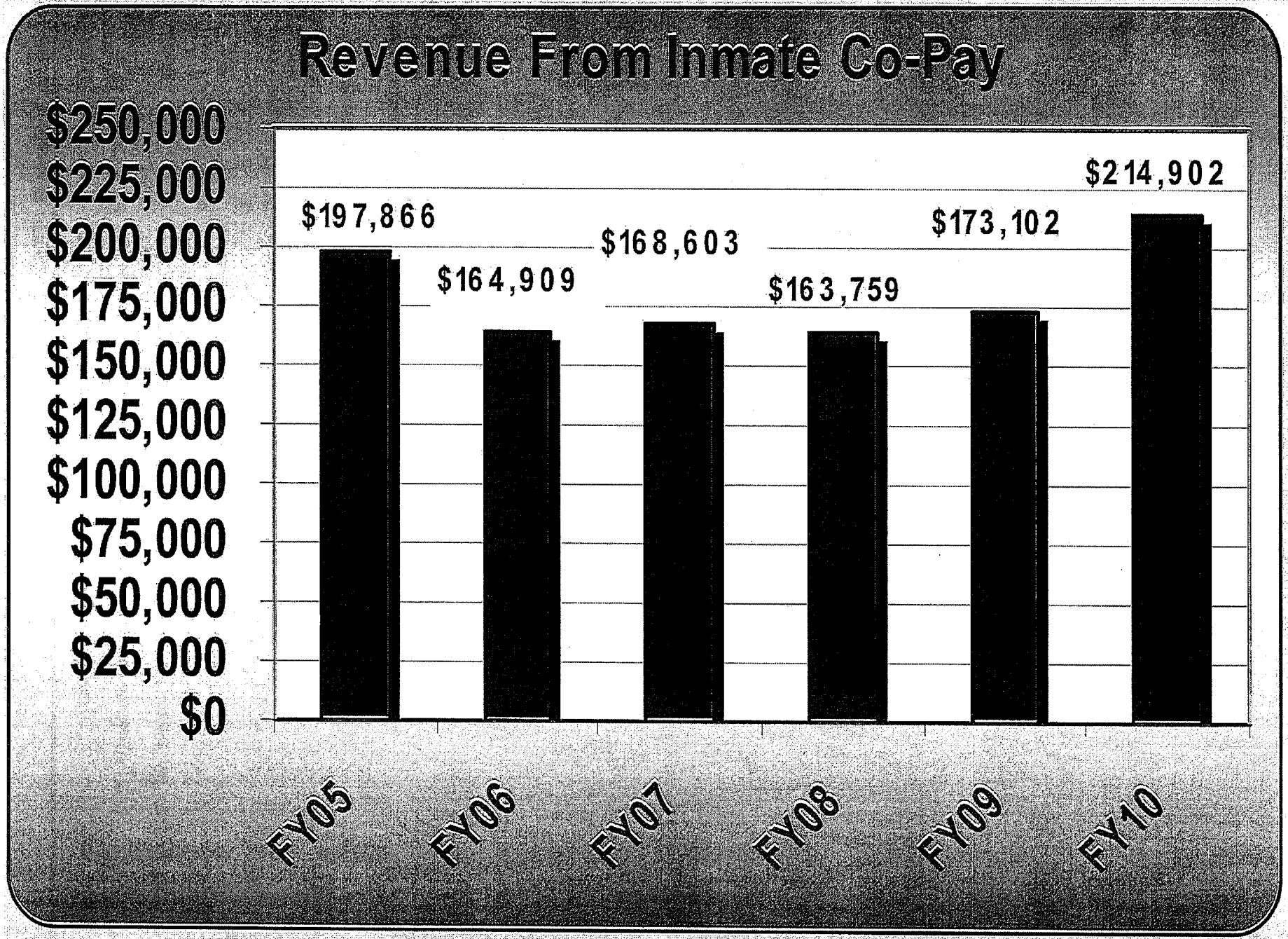
Rep. Mark Radcliffe


Pharmaceutical Expenditures
$18,000,000
$16,000,000
$14,000,000
$12,000,000
$10,000,000
$8,000,000
$6,000,000
$4,000,000
$2,000,000
$-
$12,911,744
$15,413,613
$16,851,754
$16,494,147
$15,599,197
$16,135,553
FY06
FY07
FY08
FY09
FY10
FY11 Est


Doc Central Pharmacy Transactions Per Inmate Per Year
40.0
30.0
20.0
10.0
0.0
25.6
26.7
29.6
32.9
35.8
37.1
33.7
33.4
FY04
FY05
FY06
FY07
FY08
FY09
FY10
FY11 Est


Number of Transactions Dispensed by Central Pharmacy
900,000
800,000
700,000
600,000
500,000
400,000
300,000
May 2009 Top 20 OTC's
now provided in HSU
455,789
527,027
604,552
662,439
752,674
822,110
845,039
762,727
740,137
FY03
FY04
FY05
FY06
FY07
FY08
FY09
FY10
FY11 Est

Revenue From Inmate Co-Pay



Roberts, Melissa B - DOC

From: FES User Carol Lynch [DOAFiscalEstimates@wisconsin.gov]
Sent: Thursday, April 07, 2011 2:49 PM
To: Couey, Roland - DOC; Trickle, Dustin V - DOC; Roberts, Melissa B - DOC
Cc: Lynch, Carol K - DOA
Subject: FISCAL ESTIMATE - ASSIGNMENT CHANGE - LRB # 11-1609/1, INTRO # AB-0076
Estimate Type Original

Extend Date: 04/21/2011

Submitted from the web 4/7/2011 2:48:38 PM

Fiscal Estimates URL = http://fes.doa.state.wi.us

Roberts, Melissa B - DOC

From: FES User Dustin Trickle [DOAFiscalEstimates@wisconsin.gov]
Sent: Friday, April 15, 2011 3:27 PM
To: Roberts, Melissa B - DOC
Cc: Trickle, Dustin V - DOC; Couey, Roland - DOC
Subject: FISCAL ESTIMATE - AUTHORIZATION REQUESTED - LRB # 11-1609/1, INTRO # AB-0076

I have prepared a Fiscal Estimate (Estimate Type Original) for LRB # 11-1609/1, INTRO # AB-0076. You can view the draft and details of the assignment by selecting 'Agency Assignments' from the 'Fiscal Estimates' menu. On the 'Agency Assignment List Options' screen the approver can choose 'My Assignments Only' and 'Action Items'. Other users should choose 'Entire Agency' and 'In Process.' Please authorize the estimate by sending it on to the Fiscal Estimate Coordinator or return it to me for modifications.

*** Melissa,

This fiscal estimate is for a bill that is very similar to one introduced in the 2009 session, AB 448. The only difference is that Section 2 of 2009 AB 448 is not included in 2011 AB 76. This section in my opinion leads to no substantive change to the bill from the prior session, and so, I"ve used the same fiscal estimate. The only change I"ve made to the estimate is to update the amount of inmate co-payment revenue collected to be reflective of FY10 as opposed to FY08. Let me know if you have any questions!

Submitted from the web 4/15/2011 3:26:44 PM

Fiscal Estimates URL = http://fes.doa.state.wi.us

Roberts, Melissa B - DOC

From: FES User Melissa Roberts [DOAFiscalEstimates@wisconsin.gov]
Sent: Tuesday, April 19, 2011 1:51 PM
To: Trickle, Dustin V - DOC
Cc: Roberts, Melissa B - DOC; Couey, Roland - DOC
Subject: FISCAL ESTIMATE - CORRECTION REQUESTED - LRB # 11-1609/1 Estimate Type Original, INTRO # AB-0076

Please make revisions to the estimate and/or worksheet you prepared for LRB# 11-1609/1 Estimate Type Original and send to me for authorization.

Per our phone discussion.

You can view the draft and details of the assignment by selecting 'Agency Assignments' from the 'Fiscal Estimates' menu. On the 'Agency Assignment List Options' screen choose 'My Assignments Only' and 'Action Items'.

Submitted from the web 4/19/2011 1:51:06 PM

Fiscal Estimates URL = http://fes.doa.state.wi.us

Roberts, Melissa B - DOC

From: FES User Dustin Trickle [DOAFiscalEstimates@wisconsin.gov]
Sent: Tuesday, April 19, 2011 2:25 PM
To: Roberts, Melissa B - DOC
Cc: Trickle, Dustin V - DOC; Couey, Roland - DOC
Subject: FISCAL ESTIMATE - AUTHORIZATION REQUESTED - LRB # 11-1609/1, INTRO # AB-0076

I have prepared a Fiscal Estimate (Estimate Type Original) for LRB # 11-1609/1, INTRO # AB-0076. You can view the draft and details of the assignment by selecting 'Agency Assignments' from the 'Fiscal Estimates' menu. On the 'Agency Assignment List Options' screen the approver can choose 'My Assignments Only' and 'Action Items'. Other users should choose 'Entire Agency' and 'In Process.' Please authorize the estimate by sending it on to the Fiscal Estimate Coordinator or return it to me for modifications.

*** Melissa, I"ve revised the fiscal note in accordance with our phone conversation.

Rollie, FYI, Melissa felt additional information would help explain the assertion that DOC might see increased costs from an added administrative burden to the medication ordering process.

I have replaced the sentence "Third, the Department may be subject to additional costs resulting from an increased administrative burden added to the medication ordering process" with the following paragraph:

Third, the Department may be subject to additional costs resulting from an increased administrative burden added to the medication ordering process. Additional health care staff time would be devoted to tracking additional co-pay charges for prescription drugs or medical devices, and for submission of this information to institution business offices. Additional institution business office staff time would be devoted to update the Department"s inmate account system related to these charges.

Thanks Melissa!

Submitted from the web 4/19/2011 2:25:07 PM

Fiscal Estimates URL = http://fes.doa.state.wi.us

Roberts, Melissa B - DOC

From: FES User Melissa Roberts [DOAFiscalEstimates@wisconsin.gov]
Sent: Tuesday, April 19, 2011 3:01 PM
To: DOA Fiscal Estimates; DOA Fiscal Estimates; DOA Fiscal Estimates
Cc: Roberts, Melissa B - DOC; Couey, Roland - DOC; Trickle, Dustin V - DOC
Subject: FISCAL ESTIMATE for FEC Review - LRB # 11-1609/1 Estimate Type Original, INTRO # AB-0076

A Fiscal Estimate (Estimate Type Original) has been authorized and submitted for LRB# 11-1609/1. Please send the estimate to LRB or return it for revisions. You can view the draft and details of the assignment by selecting 'Agency Assignments' from the 'Fiscal Estimates' menu.

***

Submitted from the web 4/19/2011 3:01:11 PM

Fiscal Estimates URL = http://fes.doa.state.wi.us

Roberts, Melissa B - DOC

From: Roberts, Melissa B - DOC
Sent: Friday, April 22, 2011 2:27 PM
To: Trickle, Dustin V - DOC
Cc: Couey, Roland - DOC
Subject: RE: Fiscal Estimate of AB 76

Thank you very much!

Melissa

From: Trickle, Dustin V - DOC
Sent: Friday, April 22, 2011 2:25 PM
To: Roberts, Melissa B - DOC
Cc: Couey, Roland - DOC
Subject: FW: Fiscal Estimate of AB 76

Melissa,

Please find below information from Eric Knox, BHS's Pharmacy Director, concerning this issue.

Thanks!

Dustin Trickle
Budget and Policy Analyst
Department of Corrections
Bureau of Budget and Facilities Management
3099 East Washington Ave - Main 1
PO BOX 7991
Madison, WI 53707-7991
Email: Dustin.Trickle@Wisconsin.gov
Phone: 608-240-5413
Fax: 608-240-3341

From: Knox, Eric B - DOC
Sent: Friday, April 22, 2011 2:23 PM
To: Trickle, Dustin V - DOC
Cc: Jess, Cathy A - DOC; Greer, James W - DOC; Burnett, David E - DOC
Subject: RE: Fiscal Estimate of AB 76

Dustin,

This appears to be a relatively simple request, but in reality I'm not sure our data system can provide the information in a way that would be accurate for the purposes of charging copay.

The Central Pharmacy database requires us to fill a *transaction* for each individual card of medication that is dispensed. In most cases, one *prescription* would equal one *transaction.* However, there are quite a few medications that necessitate the Central Pharmacy filling more than one card of medication, in other words, more than one *transaction*, for a one month's supply of medication to go out. Example: A 30-day supply of Ibuprofen 800mg requires *three* transactions in the pharmacy system, because the very large tablets only fit in a 30-count medication card. For a medication like Gabapentin, an inmate may receive six or seven cards for just one month's supply.

If we provide our transaction total, which is very easy to produce, I don't feel it would be an accurate reflection of what kind of revenue could be generated, if that was the purpose, unless you were going to charge an inmate for every single card that leaves the pharmacy.

Eric

From: Trickle, Dustin V - DOC
Sent: Friday, April 22, 2011 1:34 PM
To: Knox, Eric B - DOC
Cc: Jess, Cathy A - DOC; Greer, James W - DOC; Burnett, David E - DOC
Subject: FW: Fiscal Estimate of AB 76

Eric,

A representative from the Legislature is looking for data pertaining to the number of prescriptions filled in FY10. Are we able to pull this information?

He has introduced a bill to charge a co-pay for each medication issued to an inmate.

I first thought of the dispensing activity report, but then I recalled that a transaction may not always be generated from a refill or a new med order. Also, 1 transaction for a stock order may represent medication issued to many inmates.

Thanks for any assistance you may provide!

Dustin Trickle
Budget and Policy Analyst
Department of Corrections
Bureau of Budget and Facilities Management
3099 East Washington Ave - Main 1
PO BOX 7991
Madison, WI 53707-7991
Email: Dustin.Trickle@Wisconsin.gov
Phone: 608-240-5413
Fax: 608-240-3341

From: Roberts, Melissa B - DOC
Sent: Friday, April 22, 2011 1:21 PM
To: Trickle, Dustin V - DOC
Cc: Couey, Roland - DOC
Subject: RE: Fiscal Estimate of AB 76

Dustin~

I had a conversation with Rep. Radcliffe yesterday afternoon. He remains dissatisfied with our fiscal estimate and I left it with the fact that we were going to have to agree to disagree. He did ask if we had data available for the number of prescriptions filled in FY10…I said I would ask, but made no indication that we would be amending our estimate. Is this data something we have available?

Thanks for any help/direction you can provide.

Melissa

From: Trickle, Dustin V - DOC
Sent: Thursday, April 21, 2011 10:55 AM
To: Couey, Roland - DOC
Cc: Roberts, Melissa B - DOC
Subject: FW: Fiscal Estimate of AB 76

Rollie,

Please see the following arguments as they relate to Mr. Boe's email. Of course, all of these are for your consideration, and you may wish to emphasize some more than others. Feel free to let me know if you have questions or wish to talk further.

If the Department were to revise it's original fiscal estimate at the request of Mr. Boe, the estimate would be misleading for

the following reasons:

- Total revenue would not equal $7.50 multiplied by the number of prescriptions filled last year:
  - This calculation would include Juveniles, currently exempted from co-payments or similar charges due to a general inability to pay.
  - Not all charges may be collected from inmates in a timely manner:
    - Inmates with lack of funds are still statutorily required to receive services. Those who will have the ability to pay in the future due to participation in work release, or other income generating activities are issued loans resulting from the charge. Loans may be outstanding for quite some time as other obligations (such as child support or other court ordered payments) must be paid first.
    - Some inmates may never be able to pay the co-payment, such as infirm inmates with no future ability to earn income (lifers).
    - In FY04, when inmate wages were reduced, an increase was seen in outstanding loans for medical co-pays.
    - There is no way to estimate the amount of revenue which would not be collected, or how many loans would remain outstanding at the end of a fiscal year.
  - Per sections four and five of the bill, the Department would have the authority to promulgate rules concerning the drugs or devices for which a charge would be assessed as well as the charge.
    - Certain drugs or devices would be exempted from assessment of a co-payment or similar charge, although the Department is uncertain which drugs or devices would be exempted.
    - The Department is also uncertain whether the charge imposed would equal $7.50 for all prescriptions or devices.
- Removal of speculation would omit possible categories of increased cost:
  - Speculation related to the possibility of increased inmate debt is substantiated by Department experience in FY04, concerning reductions to inmate wages.
  - Speculation related to possible delayed treatment resulting from assessment of co-payments is a speculation not only of the Department, but external entities as well. The National Institute of Corrections, as well as the CDC, have expressed speculation on this issue:
    - The NIC has found that "the data suggest that utilization rates tend to remain lower in agencies that assess fees even when inmates are out of funds," and that "fee systems should be evaluated not only for the immediate fiscal impact but also the potential long term impact on inmate health care." Please see pages 4 and 7.
    - The CDC has also found co-payments can be a barrier to inmates seeking access and remedying outbreaks for illness such as MRSA: http://cdc.gov/mmwr/preview/mmwrhtml/mm5241a4.htm DOC has been very proactive in assuring the co-payment policy does not have this effect in Wisconsin.
    - Research is **very** limited concerning the effects of assessment of co-pays on health outcomes, but some studies **suggest** negative health outcomes are possible:

1. *Use of Medical Care in the Rand Insurance Experiment*
   KN Lohr, RH Brook, CJ Kamber, et al.
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   Rand Corporation, 1984

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Phone: 608-240-5413
Fax: 608-240-3341

From: Boe, Steve [mailto:Steve.Boe@legis.wisconsin.gov]
Sent: Thursday, April 21, 2011 9:14 AM
To: Trickle, Dustin V - DOC
Subject: Fiscal Estimate of AB 76

Morning Dustin,

We have received the fiscal estimate for AB 76 and have some issues with the outcome of the findings. We object to the speculation in this estimate and request to remove all the speculation and go back and multiply the number of prescriptions filled last year by $7.50.

Steve Boe

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steve.boe@legis.wisconsin.gov

Roberts, Melissa B - DOC

From: Roberts, Melissa B - DOC
Sent: Thursday, April 28, 2011 3:45 PM
To: Greer, James W - DOC
Subject: RE: Fiscal Estimate of AB 76

Jim~

I understand that the Central Pharmacy system cannot provide an accurate count re: each individual prescription, but is such information available from the institutions themselves?

Melissa

From: Greer, James W - DOC
Sent: Friday, April 22, 2011 3:06 PM
To: Roberts, Melissa B - DOC
Subject: FW: Fiscal Estimate of AB 76

FYI
Not easy to get a accurate counts medications ordered with our present pharmacy software system.
Jim

From: Knox, Eric B - DOC
Sent: Friday, April 22, 2011 2:23 PM
To: Trickle, Dustin V - DOC
Cc: Jess, Cathy A - DOC; Greer, James W - DOC; Burnett, David E - DOC
Subject: RE: Fiscal Estimate of AB 76

Dustin,

This appears to be a relatively simple request, but in reality I'm not sure our data system can provide the information in a way that would be accurate for the purposes of charging copay.

The Central Pharmacy database requires us to fill a *transaction* for each individual card of medication that is dispensed. In most cases, one *prescription* would equal one *transaction*. However, there are quite a few medications that necessitate the Central Pharmacy filling more than one card of medication, in other words, more than one *transaction*, for a one month's supply of medication to go out. Example: A 30-day supply of Ibuprofen 800mg requires *three* transactions in the pharmacy system, because the very large tablets only fit in a 30-count medication card. For a medication like Gabapentin, an inmate may receive six or seven cards for just one month's supply.

If we provide our transaction total, which is very easy to produce, I don't feel it would be an accurate reflection of what kind of revenue could be generated, if that was the purpose, unless you were going to charge an inmate for every single card that leaves the pharmacy.

Eric

From: Trickle, Dustin V - DOC
Sent: Friday, April 22, 2011 1:34 PM
To: Knox, Eric B - DOC
Cc: Jess, Cathy A - DOC; Greer, James W - DOC; Burnett, David E - DOC
Subject: FW: Fiscal Estimate of AB 76

Eric,

A representative from the Legislature is looking for data pertaining to the number of prescriptions filled in FY10. Are we able to pull this information?

He has introduced a bill to charge a co-pay for each medication issued to an inmate.

I first thought of the dispensing activity report, but then I recalled that a transaction may not always be generated from a refill or a new med order. Also, 1 transaction for a stock order may represent medication issued to many inmates.

Thanks for any assistance you may provide!

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Fax: 608-240-3341

From: Roberts, Melissa B - DOC
Sent: Friday, April 22, 2011 1:21 PM
To: Trickle, Dustin V - DOC
Cc: Couey, Roland - DOC
Subject: RE: Fiscal Estimate of AB 76

Dustin~

I had a conversation with Rep. Radcliffe yesterday afternoon. He remains dissatisfied with our fiscal estimate and I left it with the fact that we were going to have to agree to disagree. He did ask if we had data available for the number of prescriptions filled in FY10...I said I would ask, but made no indication that we would be amending our estimate. Is this data something we have available?

Thanks for any help/direction you can provide.

Melissa

From: Trickle, Dustin V - DOC
Sent: Thursday, April 21, 2011 10:55 AM
To: Couey, Roland - DOC
Cc: Roberts, Melissa B - DOC
Subject: FW: Fiscal Estimate of AB 76

Rollie,

Please see the following arguments as they relate to Mr. Boe's email. Of course, all of these are for your consideration, and you may wish to emphasize some more than others. Feel free to let me know if you have questions or wish to talk further.

If the Department were to revise it's original fiscal estimate at the request of Mr. Boe, the estimate would be misleading for the following reasons:

- Total revenue would not equal $7.50 multiplied by the number of prescriptions filled last year:
  - This calculation would include Juveniles, currently exempted from co-payments or similar charges due to a general inability to pay.
  - Not all charges may be collected from inmates in a timely manner:
    - Inmates with lack of funds are still statutorily required to receive services. Those who will have the ability to

pay in the future due to participation in work release, or other income generating activities are issued loans resulting from the charge. Loans may be outstanding for quite some time as other obligations (such as child support or other court ordered payments) must be paid first.
    - Some inmates may never be able to pay the co-payment, such as infirm inmates with no future ability to earn income (lifers).
    - In FY04, when inmate wages were reduced, an increase was seen in outstanding loans for medical co-pays.
    - There is no way to estimate the amount of revenue which would not be collected, or how many loans would remain outstanding at the end of a fiscal year.
- Per sections four and five of the bill, the Department would have the authority to promulgate rules concerning the drugs or devices for which a charge would be assessed as well as the charge.
    - Certain drugs or devices would be exempted from assessment of a co-payment or similar charge, although the Department is uncertain which drugs or devices would be exempted.
    - The Department is also uncertain whether the charge imposed would equal $7.50 for all prescriptions or devices.
- Removal of speculation would omit possible categories of increased cost:
    - Speculation related to the possibility of increased inmate debt is substantiated by Department experience in FY04, concerning reductions to inmate wages.
    - Speculation related to possible delayed treatment resulting from assessment of co-payments is a speculation not only of the Department, but external entities as well. The National Institute of Corrections, as well as the CDC, have expressed speculation on this issue:
        - The NIC has found that "the data suggest that utilization rates tend to remain lower in agencies that assess fees even when inmates are out of funds," and that "fee systems should be evaluated not only for the immediate fiscal impact but also the potential long term impact on inmate health care." Please see pages 4 and 7.

        - The CDC has also found co-payments can be a barrier to inmates seeking access and remedying outbreaks for illness such as MRSA: **http://cdc.gov/mmwr/preview/mmwrhtml/mm5241a4.htm** DOC has been very proactive in assuring the co-payment policy does not have this effect in Wisconsin.

        - Research is **very** limited concerning the effects of assessment of co-pays on health outcomes, but some studies **suggest** negative health outcomes are possible:

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From: Boe, Steve [mailto:Steve.Boe@legis.wisconsin.gov]
Sent: Thursday, April 21, 2011 9:14 AM
To: Trickle, Dustin V - DOC
Subject: Fiscal Estimate of AB 76

Morning Dustin,

We have received the fiscal estimate for AB 76 and have some issues with the outcome of the findings. We object to the speculation in this estimate and request to remove all the speculation and go back and multiply the number of prescriptions filled last year by $7.50.

Steve Boe

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Roberts, Melissa B - DOC

From: Roberts, Melissa B - DOC
Sent: Tuesday, May 03, 2011 2:47 PM
To: Radcliffe, Mark - LEGIS
Cc: Boe, Steve - LEGIS; Schuh, Dennis - DOC; Polzin, Cindy M - GOV
Subject: RE: Fiscal Estimate of AB 76

Representative Radcliffe~

The Department is not unwilling to cooperate with your request. Our Central Pharmacy system simply cannot produce the data as you requested (per my email on April 26th). After your response to that email, I asked staff in our Bureau of Health Services if there was another way (e.g., individual institution records) to capture the data you requested and there is not. The records, as you requested them, do not exist. As stated before, we can pull data on the total number of transactions, but that does not equate to the number of prescriptions. In addition, this fiscal estimate is similar to the one the Department prepared last session for 2009 AB 448 with the exception of updated numbers to reflect inmate co-pay revenue for FY10.

Since I began drafting this email, I am in receipt of your Open Records request. I acknowledge receipt and will forward it on to our records custodian.

Sincerely,

Melissa B. Roberts

Legislative Liaison
Department of Corrections
Office of the Secretary
608.240.5056

From: Radcliffe, Mark [mailto:Mark.Radcliffe@legis.wisconsin.gov]
Sent: Tuesday, April 26, 2011 2:00 PM
To: Roberts, Melissa B - DOC
Cc: Boe, Steve - LEGIS
Subject: RE: Fiscal Estimate of AB 76

Melissa:
We can certainly do an open records request, which I believe would be more costly, if DOC is unwilling to cooperate, but DOC should be willing and able to get those figures. They must be able to provide us with records of how many prescriptions they fill and the total cost to DOC for all prescription medications in a given year. Please let me know if you are unwilling to accomodate my request at which time I will have no choice but to do an open records request. Furthermore, I still ask that you re-think the missed information in the fiscal estimate. Per your own argument, a certain percentage of inmates will chose not to get presecriptions filled under the new law...because they will not want to spend their canteen $$ on the meds...then this actually saves taxpayer $$ because those med's would've cost taxpayers(and DOC) $$ had they been taken. So lets say, per your argument, that there is a 25% decrease in total prescriptions filled in year 2012, then we take the total actual cost to the state for all of 2010 prescriptions, then divide by 4 and this is the amount taxpayers will save by inmates not filling a presumably unneeded prescript...because if the inmate isnt getting it, the taxpayer wont have to pay the drug manufacturer for those meds, which we would have had to pay had the inmate took the med. Then times the remaining number of prescriptins actually filled, (((which obviously there still would be because there is no logic in believing that no meds will be taken by inmates after the law passes))) by $7.50 and this is $$ collected or to be collected under the law change. Leaving this simple math out of the fiscal estimate is not acceptable. You agree that the state collected over $200,000.00 in doctor visit copays but then argue nothing will be collected for med co-pays. This is illogical. I will await your reply on the request

for figures from DOC.
Rep. Mark Radcliffe

From: Roberts, Melissa B - DOC [mailto:MelissaB.Roberts@Wisconsin.gov]
Sent: Tue 4/26/2011 12:53 PM
To: Radcliffe, Mark
Cc: Boe, Steve; Schuh, Dennis - OJA
Subject: FW: Fiscal Estimate of AB 76

Representative Radcliffe~

As a follow-up to our conversation last week, below is a summary of the response from staff at our Central Pharmacy. Please let me know if you have any additional questions.

Thank you,

Melissa
Melissa B. Roberts
Legislative Liaison
Department of Corrections
Office of the Secretary
608.240.5056

SUMMARY:
This appears to be a relatively simple request, but in reality our data system cannot provide the information in a way that would be accurate for the purposes of charging copay.

The Central Pharmacy database requires us to fill a *transaction* for each individual card of medication that is dispensed. In some cases, one prescription would equal one *transaction*. However, there are quite a few medications that necessitate the Central Pharmacy filling more than one card of medication, in other words, more than one transaction, for a one month's supply of medication to go out. Example: A 30-day supply of Ibuprofen 800mg requires *three transactions* in the pharmacy system, because the very large tablets only fit in a 30-count medication card. For a medication like Gabapentin, an inmate may receive six or seven cards for just one month's supply.

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Sent: Thursday, April 21, 2011 9:14 AM
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Morning Dustin,

We have received the fiscal estimate for AB 76 and have some issues with the outcome of the findings. We object to the speculation in this estimate and request to remove all the speculation and go back and multiply the number of prescriptions filled last year by $7.50.

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2011 Assembly Bill 76
Public Hearing – July 28, 2011 @ 10am
Assembly Committee on Criminal Justice and Corrections
Capitol 300-NE

Good morning, Chairman Bies and members of the Committee. My name is Jim Greer and I am the Director of the Bureau of Health Services for the state's Division of Adult Institutions. I am here to testify on behalf of the Department of Corrections for information only.

The Department of Corrections currently requires inmates in state prisons to pay a medical copayment for inmate requested face-to-face visits for provision of medical or dental services. The current medical copayment charge is $7.50 and reflects the amount set per DOC Administrative Code. This amount is the highest of any state prison system in the United States. Inmates who are not able to pay are provided medical service. Loans are issued for those who will have the ability to pay in the future due to participation in work-release, institution work programs, and educational programs. In FY10, the Department collected approximately $200,000 in revenue generated from medical copayments. However, in 2010 alone, the Department had outstanding inmate loans totaling approximately $10,000.

Under this bill, the DOC must generally require such inmates to pay a deductible, coinsurance, copayment, or similar charge for prescription drugs or devices. DOC must establish, by rule, the medications and devices subject to the charge and the amount to charge for each prescription drug or device. This requirement would be in addition to current statutory requirements that inmates be charged for requested medical services. As a result, inmates requesting medical or dental services, who are then prescribed medications, would be subject to two co-payment charges within a single visit.

Several studies, which the Department would be happy to share with the Committee, have shown that increased co-pays decrease patients going to physicians and decrease medication compliance which leads to higher medical expenses to manage more ER visits and hospitalizations.

For example:

- Offenders on HIV drugs may stop taking their medications making them much more infectious to staff and other offenders.
- Offenders with significant mental health diagnoses may stop taking their medications which would increase the risk of self-harm in addition to safety concerns for DOC staff and other offenders.
- Offenders with chronic medical conditions (e.g., diabetes, asthma, high blood pressure) may stop taking their medications. This would increase offsite emergency room visits and hospitalizations.

- Offenders may refuse medications for communicable diseases (e.g., MRSA, flu, TB) which could expose our staff and offenders to increased infections and higher medical expenses.

The Department does anticipate inmates will delay seeking medications, or medical care, as the total charge an inmate would pay for a visit may increase. Delayed treatment may result in the need to pursue costlier care at off-site facilities. For example, the Department pays $1,200 per emergency room visit, on average, which may exceed any savings gained from decreased use of pharmaceuticals. In addition, the diabetic who chooses not to take his medications is likely to experience complications of the disease resulting in higher costs to the Department in the long term. Per capita medical expenditures for someone with diabetes averages five times the cost for someone without diabetes and if their diabetes is not in control the costs are even higher.

Effective September 3, 2002, the Department of Corrections, in accordance with 2001 Wisconsin Act 109, promulgated administrative rules to raise the co-pay charge from $2.50 to $7.50. In addition, the Department of Corrections implemented a revised inmate compensation plan as a result of action taken in 2003 Wisconsin Act 33 to reduce funding for inmate wages by $1.6M. This compensation plan lowered the rate at which inmates were paid for various activities.

Inmate wages now range between $0.05/hour and $0.42/hour. Additional revenue may not be generated to the extent anticipated, as the number of outstanding loans increased by 28% on a per capita basis after implementation of these changes. Additional charges, again, would likely result in an increase in outstanding loans.

BHS did an analysis of the cost for an offender making 20 cents per hour over a month's earnings at full time. The offender would earn $34.40 per month. One medical visit at $7.50 would be 22% of their total earnings. If a registered nurse at $28.00 per hour had to pay 22% of their salary for a medical visit, it would cost $1,059.00. In addition, over 6,000 offenders at any given time do not have any money in their accounts.

If additional debt is incurred by the inmate while incarcerated, the successful re-entry of the offender may be impacted when released to the community. Inmates often have limited financial resources available to them upon release, and additional charges may make it more difficult for the offender to save for expenses incurred upon release. Inmates are already required to pay the following costs out of their institution trust accounts:

- Court Ordered Restitution
- Child Support
- Federal and State Prison Litigation Reform Act Filing Fees
- Federal and State Taxes
- Account Overdrafts
- Victim Witness Surcharge
- DNA Surcharge

- Child Pornography Surcharge
- Court Costs, Fines, Other Court Ordered Obligations
- Institution Related Loans & Restitution
- DCC Supervision Fees
- Release Account Funds (to pay for state ID)

Several offender liabilities must be paid first by the offender before co-payments, due to the importance or legal nature of those liabilities, such as child support and court ordered restitution.

BHS does not currently have an automated system to generate charges from the pharmacy to the offender account system. The Department would face increased administrative costs as well, resulting from the need to update the Department's information systems to account for each charge. The pharmacy had 740,000 transactions for 2011 that would need to be billed in FY 2011.The costs of properly administering the program would significantly cut any revenue generation.

The Department appreciates consideration of this important issue. We believe sound policies and procedures are currently in place to limit the unnecessary use of medications and control the cost of pharmaceuticals. Formulary management, best prescription practices for physicians and an effective purchasing contract have kept prescription drug costs below private sector cost increases for a number of years in the Department. Pharmaceutical costs decreased in FY09 compared to the previous fiscal year, resulting from prescriptive best practices and competitive pricing from DOC's pharmaceutical supplier. Current co-pay charges should adequately dissuade inmates from un-necessarily requesting medical services.

Thank you for the opportunity to testify today and I welcome any questions you have at this time.

disability**rights** | WISCONSIN

To: Representative Garey Bies, Chair, and Members of the Criminal Justice and Corrections Committee

From: Michele M. Hughes, Staff Attorney, Community and Institutions Team; Prisons and Jails

Date: July 27, 2011

Subject: Assembly Bill 76; Relating to: costs of prescription drugs and devices for incarcerated persons.

Thank you for the opportunity to submit testimony on Assembly Bill 76 relating to the costs of prescription drugs and devices for incarcerated persons. Disability Rights Wisconsin (DRW) is the federally designated Protection and Advocacy System in Wisconsin, charged with protecting the legal and human rights of individuals with disabilities.

DRW is opposed to any co-payments, co-insurance or deductibles for medical care, including copayments and deductibles for prescription drugs or devices. We believe this bill will have far-ranging and deleterious effects on the provision of medical and mental health treatment of individuals with disabilities in the prison and jail systems.

The negative effects of co-pay charges for medicines will fall most heavily on individuals with chronic and multiple mental health and physical impairments. Although such co-pays seem small to a citizen outside of prison or jail, such co-pays loom large to an individual who is indigent and receives money in their inmate account from a family member to call home or purchase over the counter medications, or to an individual who makes 30 cents an hour on a prison job. Studies have shown that the poor are highly sensitive to even minor healthcare co-payment costs.[1] As Wisconsin has already implemented a co-pay charge for patient requested health care visits, implementing a co-pay charge for medications or medical devices will further burden individuals with disabilities in accessing care.

There are few published studies on the effectiveness of prisoner co-payment policies. A frequent argument made for co-pays is that by discouraging the overuse of health services through co-payment policy, individuals in actual need of attention will receive better care. However, there is no objective method for determining how many of the inmates who would be deterred by co-payment costs are truly sick rather than abusing the system. In fact, most individuals in prisons and jails need improved health services.[2] Prison and

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[1] N. Awofeso, *Prisoner Healthcare Co-Payment Policy: A Cost-Cutting Measure that Might Threaten Inmates' Health*, Applied Health Economics & Health Policy: 2005 - Volume 4 - Issue 3 - pp 159-164.

[2] N. Awofeso, *Prisoner Healthcare Co-Payment Policy: A Cost-Cutting Measure that Might Threaten Inmates' Health*, Applied Health Economics & Health Policy: 2005 - Volume 4 - Issue 3 - pp 159-164.

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jail detainees are primarily from socioeconomically disadvantaged backgrounds, and most suffer from high rates of communicable diseases, including HIV, Tuberculosis, Hepatitis, and sexually transmitted diseases, have long-term illnesses or have a mental illness.[3] Thus, individuals most in need of medical or mental health treatment will have diminished access to necessary medications and medical devices under the proposed bill.

Another major issue of concern is the effect of charging co-pays for persons with a serious mental illness. If an individual with a mental illness chooses to forego psychotropic medication because of a co-pay it could have serious health ramifications for the individual. It would also likely diminish correctional and medical staff safety. Additional staff resources may be needed to address behaviors related to refusal of a person with a mental illness to take a psychotropic medication, including more officers and medical staff for observation or segregation rounds, and suit-ups for cell extractions. These costs are difficult to calculate, but may be great if an individual or staff member is seriously injured.

A question also arises as to whether an inmate co-pay system will recoup costs in light of the increased administrative work involved. [4] Indeed, in one study from the California prison system, an auditor estimated the annual cost of administering the program amounted to almost five times the annual collection of fees.[5]

In 1983, the American Medical Association created the National Commission on Correctional Health Care (NCCHC). NCCHC is a not-for-profit organization with the primary purpose of working with staff in jails and prisons to improve their healthcare delivery systems. NCCHC's voluntary health services accreditation program is well-known and well-respected among the nation's prisons, jails and juvenile detention facilities.

The NCCHC recognizes that "the lack of access to health care remains among the most significant characteristics of prison, jail, and juvenile correctional systems in the United States." NCCHC is opposed to the establishment of a co-payment program that restricts an individual's access to care. ***Under NCCHC's guidelines, pharmacy medications to maintain health should not be included in an inmate co-pay system.*** (NCCHC's position statement is attached to this written testimony)

In its position paper, NCCHC highlighted some of the arguments against an inmate co-pay system, including:

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[3] National Commission on Correctional Health Care (NCCHC). The Health Status of Soon-To-Be-Released Inmates: A Report to Congress, March 2002: Available from URL: http://www.ncchc.org/pubs/pubs_stbr.html

[4] National Commission on Correctional Health Care (NCCHC). Charging inmates a fee for health care services: position statement (attached)

[5] N. Awofeso, *Prisoner Healthcare Co-Payment Policy: A Cost-Cutting Measure that Might Threaten Inmates' Health*, Applied Health Economics & Health Policy: 2005 - Volume 4 - Issue 3 - pp 159-164, citing Birdlebough S., *Analysis of SB 396: health care for prisoners, Sacramento, letter in support of SB 396, on behalf of Friends Committee on Legislation in California*, 11 July 2001.

- The importance of preventative care is ignored. Avoiding medical care for "minor" situations can lead to serious consequences for the inmate. It can also lead to the spread of highly communicable diseases.
- Inmates are almost always indigent. They most often rely on a family member to provide the funds they can use for toiletries, over-the-counter medications like analgesics and antacids, telephone calls, writing paper and pens, sanitary napkins, candy, cigarettes, etc. These "extras" become extremely important to one who is locked up twenty-four hours each day. The inmate may well choose to forego treatment of a medical problem in order to be able to buy the shampoo or toothpaste.

To reiterate, NCCHC's guidelines state that pharmacy medications to maintain health should not be included in an inmate co-pay system. Furthermore, NCCHC's position is that any co-payment program must assure that access to care is not blocked. To that end NCCHC recommends the following guidelines before a prison or jail implements an inmate medical co-pay program.

1. The institution should examine its management of sick call, use of emergency services, system of triage, and other aspects of the health care system for efficiency and efficacy.
2. Facilities should track the incidence of disease and all other health problems prior to and following the implementation of the fee-for-service program. Statistics should be maintained and reviewed. The data should demonstrate that infection levels, or other adverse outcome indicators, as well as incidents of delayed diagnosis and treatment of serious medical problems within the facility, are either consistent with or lower than the levels before implementation. Data that show an increase in infection levels or other adverse outcomes may indicate that the fee-for-service program is unintentionally blocking access to needed care.
3. The system should allow for a minimum balance in the inmate's account, or provide another mechanism permitting the inmate to have access to necessary hygiene items (shampoo, shaving accessories, etc.) and over-the-counter medications.
4. The continuation of any fee-for-service health care program should be contingent on evidence it does not impede access to care. Such evidence might consist of increased infection rates, delayed diagnosis and treatment of medical problems, or other adverse outcomes.

Thus, even if the Wisconsin legislature seeks to create prescription or medical device co-pays, coinsurance or deductibles for individuals in prisons or jails, such a system should not be implemented before the Department of Corrections and counties conduct an analysis using NCCHC guidelines.

The major reason for a co-payment program is to limit prisoner healthcare costs. However, prison costs are high primarily because of rising prisoner populations and increased penalties lengthening prison stays. We believe that the legislative focus should be on decreasing prison and jail populations through innovative and evidence-based diversion, treatment or reentry programs, such as the Department of Corrections'

"Opening Avenues of Reentry Success" program, an anti-recidivism program for persons with serious mental illness and a high risk of reoffending. Even a small decrease in recidivism can greatly decrease prison costs, including medical costs."

We request that this Committee consider the unintended consequences of this bill, and consider other alternatives to implementation of these co-pay provisions.

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Position Statements

Charging Inmates a Fee for Health Care Services

Background
Based upon more than 20 years of intensive evaluation of health care systems in jails and prisons, the National Commission on Correctional Heath Care recognizes that lack of access to health care is a serious problem in detention and correctional institutions.

Charging inmates for health services is a subject that recently has become a prominent issue in the delivery of correctional health services. While there are a few examples of such charges that date back ten or more years, only in the past two years has the concept been activated to the extent that many jails and prisons either have such a program or are looking at the possibility of creating a fee for health services program, also sometimes referred to as an inmate co-payment system, in their facilities.

In a survey of 190 jail jurisdictions conducted by the National Commission on Correctional Health Care at the end of 1994, of the 117 jail systems responding, 34 percent stated they had a program that charged inmates for health services and another 15 percent indicated they were exploring such a program for implementation in their next fiscal year. Most programs in place required a fixed payment—typically between $2 and $10—for certain health services encounters.

Clearly, there are reasons one might argue either for or against the imposition of charges for health care services provided to inmates, although there is limited research on the efficacy of such programs. Some of the arguments for charging inmates a fee for health care services are:

- The cost of medical care is an increasingly heavy burden on the financial resources of the facility, state, or county. The cost needs to be controlled legally without affecting needed care.
- Sick call can be and is abused by some inmates. This abuse of sick call places a strain on available resources, making it more difficult to provide adequate care for inmates who really need the attention.
- Inmates who can spend money on a candy bar or a bottle of shampoo should be able to pay for medical care with the same funds—it is a matter of priorities.
- It will do away with frivolous requests for medical attention.
- It cuts down on security's problems in transporting inmates to and from sick call by reducing utilization.
- It instills a sense of fiscal responsibility and forces the inmate to make mature choices on how to spend his or her money.

On the other hand, some of the arguments against charging inmates a fee for health care services are:

- Access is impeded. A fee-for-service program ignores the significance of full and unimpeded access to sick call and the importance of preventive care.
- Inmates are almost always in an "indigent" mode. They seldom have outside resources and most have no source of income while incarcerated. They most often rely on a spouse, mother or other family member to provide some funds they can use for toiletries, over-the-counter medications like analgesics and antacids, telephone calls, writing paper and pens, sanitary napkins, candy, cigarettes, etc. These "extras" become extremely

important to one who is locked up twenty-four hours each day. The inmate may well choose to forego treatment of a medical problem in order to be able to buy the shampoo or toothpaste.

- The program sets up two tiers of inmates—those who have funds to get medical care and commissary privileges, and those who have to choose between the two.
- Avoiding medical care for "minor" situations can lead to serious consequences for the inmate or inmate population, since the minor situation can deteriorate to serious status or lead to the infection of others.
- Because of crowded conditions, there is a risk of spreading infections, and effective measures need to be taken to reduce this risk. Daily sick call should be encouraged rather than discouraged.
- A properly administered sick call program keeps costs down through a good triage system, which has a lower level of qualified staff see the complaining inmate first, with referral on to higher levels of staff only as medically indicated.
- Charging health service fees as a management tool does not recoup costs; rather, when looking at the increased administrative work involved or the long-term effect of the program, charging health service fees can cost more to implement than what is recovered.

Position Statement

The National Commission on Correctional Health Care strongly believes access to health care services is at the foundation of any acceptable correctional health services program. Such access should not be obstructed, because without ready access to necessary health care services—as determined by qualified health staff—the health of the inmate population, as well as that of the staff and the public, may be jeopardized.

The NCCHC recognizes that lack of access to health care remains among the most significant characteristics of prison, jail, and juvenile correctional systems in the United States. Because of their disproportionate poverty and incidence of drug use, inmates have higher morbidity and mortality from treatable serious medical problems. Therefore, the NCCHC is opposed to the establishment of a fee-for-service or co-payment program that restricts patient access to care.

If a fee-for-service program is to be implemented, the NCCHC recommends that it be founded on the principle that access to health services will be available to all inmates regardless of their ability to pay. To insure access to care is not blocked, the following guidelines should be followed.

1. Before initiating a fee-for-service program, the institution should examine its management of sick call, use of emergency services, system of triage, and other aspects of the health care system for efficiency and efficacy.
2. Facilities should track the incidence of disease and all other health problems prior to and following the implementation of the fee-for-service program. Statistics should be maintained and reviewed. The data should demonstrate that infection levels, or other adverse outcome indicators, as well as incidents of delayed diagnosis and treatment of serious medical problems within the facility, are either consistent with or lower than the levels before implementation. Data that show an increase in infection levels or other adverse outcomes may indicate that the fee-for-service program is unintentionally blocking access to needed care.
3. All inmates should be informed on the details of the fee-for-service program upon admission, and it should be made clear that the program is not designed to deny access to care. Inmates should have a full working knowledge of the situations in which they will or will not be assessed a fee as well as any administrative procedures necessary to request a visit with a health care provider.
4. Only services initiated by the inmate should be subject to a fee or other charges. No charges should be made for the following: admission health screening (medical, dental, and mental) or any required follow-up to the screening; the health assessments required by facility policy; emergency care and trauma care; hospitalization; infirmary care; perinatal care; in-house lab and diagnostic services; pharmacy medications to maintain health; diagnosis and treatment of contagious disease; chronic care or other staff-initiated care, including follow-up and referral visits; and mental health care including drug abuse and addiction.
5. The assessment of a charge should be made after the fact. The health care provider should be removed from the operation of collecting the fee.
6. Charges should be small and not compounded when a patient is seen by more than one provider for the same circumstance.

7. No inmate should be denied care because of a record of non-payment or current inability to pay for same.
8. The system should allow for a minimum balance in the inmate's account, or provide another mechanism permitting the inmate to have access to necessary hygiene items (shampoo, shaving accessories, etc.) and over-the-counter medications.
9. The facility should have a grievance system in place that accurately tracks complaints regarding the program. Grievances should be reviewed periodically, and a consistently high rate of grievances should draw attention to the need to work with staff to address specific problems that may have accompanied the fee-for-service program.
10. The continuation of any fee-for-service health care program should be contingent on evidence it does not impede access to care. Such evidence might consist of increased infection rates, delayed diagnosis and treatment of medical problems, or other adverse outcomes.

Adopted by the National Commission on Correctional Health Care Board of Directors
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